

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

In the Matter of

PUBLIC UTILITIES COMMISSION

**Instituting a Proceeding to Investigate Competitive
Bidding for New Generating Capacity in Hawaii.**

DOCKET NO. 03-0372

PUBLIC UTILITIES
COMMISSION

2004 FEB 10 P 2:45

FILED

**MEMORANDUM IN RESPONSE TO MOTION TO STRIKE
OR, IN THE ALTERNATIVE, RESPONSE OF JOHNSON
CONTROLS, INC. AND PACIFIC MACHINERY, INC.**

AND

CERTIFICATE OF SERVICE

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HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED**

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**MEMORANDUM IN RESPONSE TO MOTION TO STRIKE
OR, IN THE ALTERNATIVE, RESPONSE OF JOHNSON
CONTROLS, INC. AND PACIFIC MACHINERY, INC.**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO") and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively referred to as the "Companies") in response to the Motion to Strike or, in the alternative, Response of Johnson Controls, Inc. ("JCI") and Pacific Machinery, Inc. ("PMI") ("Reply of JCI and PMI") dated January 30, 2004.

The Reply of JCI and PMI responded to the Companies' Memorandum in Response to Motions to Intervene filed January 23, 2004 ("Companies' Response"). The Reply of JCI and PMI, among other things, questioned the timing of the Companies' Response.

JCI and PMI have not been prejudiced by the timing of the Companies' Response. The Commission has not yet made its determination concerning the motions to intervene in this docket, and the Companies' Response, whether timely or not, was filed in order to inform the

Commission that the Companies did not oppose the motions to intervene and/or participate. (In the Companies' Response, the Companies did not oppose the motions to intervene, but did comment on the request of JCI and PMI to intervene on a "joint and several basis".) The Companies had previously informed the Commission of their position with respect to the request of JCI and PMI to intervene in Commission proceedings on a joint and several basis (in the Companies' Memorandum in Response to Motion to Intervene of Johnson Controls, Inc., and Pacific Machinery, Inc. filed November 12, 2003 in Docket No. 03-0366 [the Companies' application for a combined heat and power program]). In addition, the Reply of JCI and PMI provided JCI and PMI with the opportunity to set forth the reasons why they should be allowed to intervene on a joint and several basis (which JCI and PMI had not previously set forth in this docket or Docket No. 03-0366).

The Reply of JCI and PMI refers to Docket No. 02-0362 (an application of the Western Motor Tariff Bureau, Inc. involving increases to rates and charges) in which two intervenors filed a joint motion to intervene, which was unopposed. The Commission, on its own, denied the intervention of one intervenor, but allowed the other intervenor to intervene in the docket. In re Western Motor Tariff Bureau, Inc., Docket No. 02-0362, Order No. 19741 (October 29, 2002). The Companies do not oppose the request for intervention of JCI and PMI being treated in a similar manner. The Companies do not oppose the Commission granting the intervention of one intervenor (i.e., either JCI or PMI) in the event the Commission denies the intervention of the other intervenor. In addition, in the event JCI and PMI are allowed to intervene in this docket and subsequently one of them withdraws as an intervenor in this docket, the Companies do not

oppose allowing the remaining intervenor (i.e., either JCI or PMI) to continue to participate in this docket as an intervenor. On the other hand, the intervention should be treated as joint if, and as long as, both JCI and PMI are parties.

Dated: Honolulu, Hawaii, February 10, 2004.

A handwritten signature in cursive script, appearing to read "Peter Y. Kikuta", written in black ink.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Memorandum in Response to Motion to Strike or, in the alternative, Response of Johnson Controls, Inc. and Pacific Machinery, Inc., together with this Certificate of Service, by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

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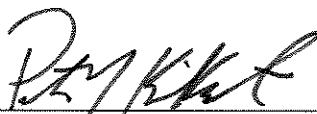
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Dated: Honolulu, Hawaii, February 10, 2004.



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